

## WEANER PIG SUPPLY AND PURCHASE AGREEMENT

This AGREEMENT is made this \_\_\_ day of \_\_\_\_\_, 1996,  
between \_\_\_\_\_, a Nebraska limited liability partnership, of  
Nebraska, (hereinafter called "Buyer") and \_\_\_\_\_, a Nebraska corporation, of  
Nebraska, (hereinafter called "Seller").

WHEREAS, Buyer operates nursery facilities with sufficient capacity to handle the volume of weaner pigs contemplated herein and Buyer wishes to purchase pigs weighing between 8 and 10 pounds from Seller that meet Buyer's specifications ("Weaner Pigs"); and

WHEREAS, Buyer has the necessary facilities and capacity to purchase, feed, market and otherwise process the entire production of Weaner Pigs from Seller's herd and anticipates that Buyer will continue to have such facilities and capacity; and

WHEREAS, Seller has made a substantial investment in facilities in reliance upon the promises set forth herein and Seller desires to obtain a constant market for Weaner Pigs that Seller produces;

NOW THEREFORE, in consideration of the mutual agreements herein and for other good and valuable consideration, the parties hereto agree as follows:

1. **PURCHASE AND SALE OF PIGS.** Seller shall supply and sell to Buyer and Buyer shall purchase from Seller all pigs produced from Seller's sow herd. All pigs subject to this agreement shall be delivered on a weekly basis, unless otherwise provided or mutually agreed.
2. **TERM.** The term of this agreement shall begin on the date of the first delivery of Seller's pigs and shall continue in effect for seven (7) years. This agreement shall automatically renew for a successive seven (7) year term at the end of each year that this agreement shall be in force, unless terminated by the parties as set forth herein.
3. **PURCHASE PRICE.** The Weaner Pig price shall be adjusted weekly and paid to Seller (and to any co-payee lender designated by Seller) within 48 hours of delivery of the Weaner Pigs to Buyer. Buyer will maintain pertinent records of market information from the Chicago Mercantile Exchange. For all Weaner Pigs delivered to Buyer by Seller, the Weaner Pig price shall be calculated according to the following formula:

Weaner Pig Price = Avg. "Lean Hog" Futures Price x 74% x  
250lbs. x 28.5%.

For the purpose of this agreement, the Avg. "Lean Hog" Futures Price shall mean the average of the closing price, on the five trading days (excluding legal holidays) prior to

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delivery of Weaner Pigs by Seller, for Lean Hog futures contracts at the Chicago Mercantile Exchange (the carcass-based futures contract category which begins trading in the February 1997 contract month) for the Futures Month indicated in the schedule set forth below. [For example: The closing price on the five trading days prior to delivery shall mean the average of the daily close for Wednesday, Tuesday, Monday, Friday, and Thursday prior to delivery on Thursday.] If the Chicago Mercantile Exchange should add additional Futures Months, or make any change in the manner in which it prices lean hogs, live market hogs, or hog carcasses, the schedule below shall be amended accordingly by an addendum agreement executed by the parties hereto.

#### Futures Schedule

Delivery Date	Futures Month
January	June
February	July
March	August
April	October
May	October
June	December
July	December
August	February
September	February
October	April
November	April
December	June

4. **INSPECTION AND GRADING OF PIGS.** Buyer shall inspect and grade all pigs upon delivery as follows:

- A. "Grade One Pigs" shall mean all pigs aged 13 to 19 days as of the date of delivery, weighing 8 pounds or more, free of the following defects: uncastrated or freshly castrated males, ruptures, lame-stiff pigs, malformed joints, observable abscesses and prolapses. Seller shall be paid the full Weaner Pig Price as calculated above for Grade One Pigs.
- B. "Substandard Pigs" shall mean all pigs aged 13 to 19 days as of the date of delivery, weighing 5 pounds or more, not qualifying as "Grade One Pigs," free of the following defects: uncastrated or freshly castrated males, ruptures, lame-stiff pigs, malformed joints, observable abscesses and prolapses. A \$1.00 per half pound adjustment will be made for each half pound under ten pounds (an eight pound pig will not be adjusted; a 7 ½ pound pig will be adjusted \$5.00).

- C. "Reject Pigs" shall mean all dead, diseased or damaged pigs or pigs having any of the following defects: ruptures, pigs weighing less than 5 pounds, lame-stiff pigs, malformed joints, observable abscesses and prolapses. Upon grading, all rejects shall be destroyed or otherwise disposed of at Seller's expense.
- D. In the event that a dispute arises between the parties hereto concerning the grading of any Weaner Pigs, the Weaner Pigs in question shall be held by Buyer for a period of no longer than 72 hours and inspected within such time by a veterinarian mutually agreed upon by the parties. The determination of the grade by the veterinarian shall be final and binding upon the parties. The expense of the inspection shall be borne by the parties equally.

5. **WEANER PIG DELIVERY.** The Weaner Pigs will be delivered by Seller to Buyer's farm at Seller's expense. Seller represents and warrants that Seller will have good and Marketable title to the Weaner Pigs at the time of delivery and that the pigs will be delivered to Buyer free and clear of all liens and encumbrances except for any lien in favor of Seller's primary lender, and that upon payment to Seller and its lender, such lien shall be released.

6. **WEANER PIG PRODUCTION.** Seller shall provide all of the resources to house, feed and care for the production and rearing of the pigs at Seller's farm, located in Sec. , Township , in , Nebraska, in accordance with reasonably accepted practices of good animal husbandry and the terms of this agreement.

- A. Seller shall keep Buyer informed of its current vaccination program. Seller shall vaccinate the Weaner Pigs prior to delivery for certain other health problems as requested by Buyer, so long as such vaccinations shall not endanger the health of Seller's livestock. In the event additional vaccination is requested by Buyer, Buyer shall bear the costs of the vaccines and any additional labor involved.
- B. Seller shall maintain a breeding herd which consists of animals that are the highest grade of breeding stock available from Pig Improvement Corporation, ("PIC") or of comparable quality. Artificial insemination ("A.I.") may be used at Seller's discretion or at Buyer's direction. Seller agrees to follow any reasonable breeding program recommended by Buyer, as long as such program comports with reasonable genetic and economic standards within the swine industry. In the event that any approved breeding stock becomes unavailable to the Seller during the term of

this agreement, for health or economic reasons, Buyer will consent to the substitution of comparable breeding stock or breeding programs, which consent shall not be unreasonably withheld.

- C. Buyer and Seller shall mutually agree upon a veterinarian who shall be employed by both parties, at their own expense, to provide actual herd inspections on the premises of both parties at least quarterly each year. Any such veterinarian shall be available by telephone to either party within six hours notice and shall be available for on-site visits within 72 hours of any request. Such veterinarian shall be granted the right to discuss health recommendations made to either party with the other party and both parties shall comply with such recommendations. Use of such veterinarian shall not be exclusive and either party may hire additional veterinarians at their own expense.

7. **INSPECTION OF FACILITIES AND RECORDS.** The parties hereto, through their employees, agents or other representatives, have the right to inspect the facilities of the other parties hereto and any and all relevant production and market information records during normal business hours during the term of this agreement.

8. **FORCE MAJEURE.** Neither party shall be in default hereunder by reason of such party's delay in the performance or failure to perform any of such party's obligations herein if such delay or failure is caused by strikes, acts of God (which shall be deemed to exclude failure to follow reasonable husbandry practices) or public riots, incendiaries, interference by civil or military authorities, or by any reason beyond such party's control or without such party's fault or negligence.

9. **TEMPORARY INABILITY TO PERFORM.** In the event that any party is unable to perform the material obligations imposed hereunder, in full or in part, in a reasonable and timely manner, whether due to *force majeure* or other circumstances beyond the party's control or due to such party's own fault or negligence, such party shall notify the other party of such inability to perform within 36 hours of knowledge of such inability to perform. The parties intend that this section shall pertain only to the inability to perform material obligations of this agreement that are merely temporary and intend that neither party shall be prevented from obtaining suitable sources of inputs or marketing channels for the duration of such temporary inability to perform. Nothing in this section shall constitute a waiver of any party's right to seek compensation for any losses incurred by such party due to such inability to perform, whether temporary or not, nor shall either party be precluded from terminating this agreement for breach of the same pursuant to section 10 herein if it reasonably appears that the inability of the other party to perform is not temporary in character. Upon the giving of such notice:

- A. Buyer grants Seller the right to secure alternate parties to whom Seller's production of Weaner Pigs may be sold in the event of Buyer's inability take delivery of such Weaner Pigs and further grants Seller the right to sell such Weaner Pigs to other parties during the duration of Buyer's inability to perform.
- B. Seller grants Buyer the right to secure alternate sources of Weaner Pigs in the event that Seller's inability to deliver Weaner Pigs to Buyer and further grants Buyer the right to purchase Weaner Pigs from other parties during the duration of Seller's inability to perform.
- C. The parties hereto shall obtain and maintain in force property and casualty insurance in the amount of the full replacement value of their respective swine production facilities (including livestock) for the duration of this agreement. Further, the parties hereto shall obtain and maintain in force for the duration of this agreement liability insurance with limits of at least \$1 million, and business interruption insurance coverage with limits sufficient to discharge the extent of each party's obligations to the other party hereto. Finally, for the duration of this agreement, "key man" term life insurance shall be maintained in force, insuring the lives of the principals of the parties hereto as follows:
- i. Buyer: \_\_\_\_\_ shall purchase and maintain term life insurance policies insuring the lives of \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ each, naming \_\_\_\_\_ as the beneficiary on each policy.
  - ii. Seller: \_\_\_\_\_ shall purchase and maintain a term life insurance policy insuring the life of \_\_\_\_\_ in the amount of \$ \_\_\_\_\_, naming L.L.P. as the beneficiary on such policy.
- D. Any party that is temporarily unable to perform the material obligations of this agreement shall correct the problem or obstacle that prevents full performance of such obligations in a reasonable and timely manner.
- E. The failure of Buyer to give notice of any inability to take delivery and pay for Weaner Pigs supplied by Seller shall not preclude Seller from selling all or part of its production of Weaner Pigs to other parties if Buyer actually fails to take

delivery and/or pay for such Weaner Pigs, or it becomes reasonably apparent that Buyer will be unable to take delivery and/or pay for such Weaner Pigs, in order to mitigate its damages hereunder.

10. **TERMINATION.** After the expiration of seven (7) years from the date of this agreement, this agreement may be terminated at any time by either party upon six (6) months written notice to the other party. If a party breaches this agreement, the other party may give written notice of termination due to such breach, and the agreement shall terminate thirty (30) days after the giving of the written notice unless the party in breach fully cures the breach within such thirty (30) day period.

11. **NOTICES.** Any notice required hereunder shall be in writing and shall be deemed to be delivered, whether actually delivered or not, when deposited in the United States mail, postage prepaid, by certified or registered mail, return receipt requested, when sent to the addresses below:

Seller:

Buyer:

and

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12. **DISPUTES.** Disputes between the parties involving the proper grading of Weaner Pigs shall be resolved by the provisions of paragraph 4.D. herein. All other disputes concerning the interpretation or application of the terms of this agreement shall be submitted to a mediator mutually agreed upon by the parties hereto, at least 90 days prior to the institution of any litigation concerning the same.

13. **RELATIONSHIP OF THE PARTIES.** The relationship between the parties hereto is that of independent contractors and this agreement shall not be construed so as to create the relationship of employer/employee or principal/agent or joint venture between the parties hereto. Each party shall be solely responsible for the conduct, direction, operation and activities in connection with such party's business and employees and the performance of its obligations hereunder.

14. **AUTHORITY TO ENTER INTO THIS AGREEMENT.** Each person executing this agreement represents and warrants that this agreement has been duly and validly authorized by such person's principal, if any, and that all necessary action has been taken, and that this agreement constitutes the valid and binding obligation of the parties hereto enforceable in accordance with its terms.

15. **ASSIGNMENT.** This agreement shall not be assigned by any party without the prior written consent of the other party.

16. **BINDING EFFECT.** The terms and conditions of this agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, successors and assigns.

17. **CONSTRUCTION.** This agreement is governed by the laws of the State of Nebraska and shall be interpreted in conformity with such laws. The heading of any section shall not affect the interpretation thereof. The recitals hereto are incorporated herein and made a part of this agreement by this reference.

18. **ENTIRE AGREEMENT.** This agreement is a final expression of the parties' intention on the subject matter hereof and replaces any prior written or oral agreements. Any change, modification, amendment or alteration of this agreement shall be in writing and signed by both parties.

IN WITNESS WHEREOF, the parties have executed this agreement effective the day and year above written.

BUYER

\_\_\_\_\_, a Nebraska L.L.P.

\_\_\_\_\_, partner

\_\_\_\_\_, partner

SELLER

\_\_\_\_\_, a Nebraska Corporation

By:

\_\_\_\_\_  
President

STATE OF NEBRASKA )

) SS:

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 1996, by \_\_\_\_\_, partner of \_\_\_\_\_ L.P.

\_\_\_\_\_  
Notary Public



STATE OF NEBRASKA     )  
                                  ) SS:  
COUNTY OF                 )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of  
\_\_\_\_\_, 1996, by

\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA     )  
                                  ) SS:  
COUNTY OF                 )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of  
\_\_\_\_\_, 1996, by \_\_\_\_\_, a Nebraska  
corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public